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LeBrun: What's the state's ethical mandate in water crises?

Fred LeBrun Published 7:35 pm, Saturday, February 27, 2016

Oddly, that perpetually boiling over issue of ethical standards here in Planet Albany seems to have been cautiously moved to a back burner, if not off the stove entirely.

Although it's always struck me as strange that what drives the train for ethical reform in state government and has for years isn't ethical misconduct at all.

Rather, it's downright baldly illegal doings that send practitioners to jail, acts that are already amply covered for the most part by any number of prohibitive statutes.

Not that these laws shouldn't be ramped up to meet the needs of modern political corruption, but ethical lapses and illegalities are different breeds that sometimes run on the same track, but often don't.

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We are surrounded by questionable ethical conduct that does not rise to illegality.

Equally odd is that, according to Gov. **Andrew Cuomo**, the full force of ethical reform should fall on the Legislature because some legislators, and only they, are the ones getting caught, indicted, tried and generally convicted of crimes of corruption.

The governor's logic is truly squishy, although I suspect he would merely toss off the obvious differences to semantics.

That's what he did last week, claiming mere semantics, in the continuing saga of Hoosick Falls' water quality debacle when he deliberately confused the **EPA's** guidance for the maximum allowable perfluorooctanoic acid (PFOA) short term exposure in drinking water, 400 parts per trillion, and long term, 100 ppt, and got caught at it by a reporter.

He claimed that because the EPA only recently came up with the 100 ppt, his **Health**

Department couldn't have responded any quicker.

Except the 400 ppt has been clearly labeled for some time as maximum exposure for short term only, and PFOA has quite likely been in the Hoosick Falls public water system and nearby private wells since the mid-1950s. That certainly redefines "short term."

What the governor's assertion underscores, as do a number of government emails and communications that have surfaced concerning the Hoosick Falls debacle, is that the administration is going to lean on a narrow legal defense for what it did and didn't do when the PFOA hit the fan.

They'll claim that because the toxic compound PFOA is unregulated, its health consequences are unclear, and so is enforcement against it, or the need to even inform the public of its presence.

Now that the **Saint-Gobain Performance Plastic** site has been declared a Superfund site specifically because of PFOA and the feds and state are all over it, that strategy seems rather disdainful of the public's justifiable anxiety and concerns.

It's also poppycock, because peer-reviewed public health risks were well-established for various concentrations of PFOA at least four years ago. And by the way, they are scary.

But the larger point, and one I hope the coming Assembly hearings on statewide water quality issues will pursue diligently, is establishing from this administration and its Health Department what, as the guardians of our public health, they consider their ethical mandate to the citizens of the state to be? Do only legal requirements prevail, legal standards of enforcement? What does it take to trigger public acknowledgment that we may have a problem here?

So now we play hopscotch with PFOA contamination as if the state is just now discovering there may be other sites. Petersburg, the Little Hoosick, nearby Bennington, and, I'm told, Glens Falls could show up on that radar as well. But what about statewide?

Does the Health Department now have a moral responsibility to contact every

community where it is known or suspected PFOA has been or is being used?

One would think so.

Ethics in governance is the challenge here, and Cuomo can take the lawyerly tack he has so far, or he can, as he has from time to time when it fits with his plans, forsake the bull's tail and grab the horns.

Last week, three of our local legislators, at the behest of a cadre of our leading lawyers, introduced a bill that would extend deadlines for filing lawsuits and claims from victims of environmental contamination such as what has occurred in Hoosick Falls. It is, as Assemblyman **John McDonald**, D-Cohoes, a pharmacist by trade, said, the right thing to do. Attorney **E. Stewart Jones**, speaking also for colleagues **Steve Coffey**, Don Boyagian, and a couple of Hoosick Falls lawyers, **Ed Gorman** and **D.J. Tate**, stressed that the statute of limitations in the present law could well deprive those with deserving claims, or their families, from ever knowing justice.

The right thing to do. How quaint that sounds and so out of place for Planet Albany, but entirely appropriate.

Last week New York's first **Department of Environmental Conservation** commissioner, **Henry Diamond**, died.

He was a charismatic force in the three years he was in Albany, beginning in 1970, creating an agency that didn't exist in any other state, nor even in Washington, D.C. He brought a civil rights fervor to emerging environmentalism, and set the standard for all DEC commissioners who followed. Just as his boss, **Nelson Rockefeller**, set the standard for governors since.

I wonder what either Rockefeller or Diamond would make of Hoosick Falls, and state government's failure protect its citizens from the toxic corruption of industrial waste.

I want to believe they would have made the heavens tremble, without a federal prosecutor like Preet Bharara even looking over their shoulders.

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